

FCC MAIL SECTION

Before the
Federal Communications Commission
MAR 26 1995
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 95-27

In the Matter of

Amendment of Section 73.202(b), RM-8582
Table of Allotments,
FM Broadcast Stations.
(Yazoo City, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 9, 1995; Released: February 23, 1995

Comment Date: April 17, 1995

Reply Comment Date: May 2, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Mississippi College ("petitioner"), licensee of Station WHJT(FM), Channel 228A, Clinton, Mississippi, seeking the deletion of vacant Channel 229A at Yazoo City, Mississippi.

2. In support of its proposal, petitioner states that the deletion of Channel 229A at Yazoo City would enable Station WHJT(FM) to increase its power to the maximum permitted for a Class A station, thereby improving petitioner's service to the public. Furthermore, petitioner states that Dri-Two, Inc.'s construction permit for Station WAZF(FM), Channel 229A, Yazoo City, was cancelled and the channel has been vacant since July 1993.¹ Petitioner contends that deleting the channel at Yazoo City would cause no loss of service since Yazoo City is presently served by Station WJNS(FM), as well as an AM station, WAZF(AM). Further, petitioner argues that deletion of Channel 229A will eliminate two short-spaced allotments, thus serving the public interest.

3. We believe the public interest would be served by the deletion of Channel 229A at Yazoo City, since it could enable Station WHJT(FM) to increase its power.² However, we note that the Commission does not delete a channel in which interest has been expressed. Therefore, should the Commission receive an expression of interest by the initial comment deadline specified herein for Channel 229A at Yazoo City, Mississippi, petitioner's proposal to delete Channel 229A at Yazoo City may be dismissed.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No. Proposed
Yazoo City, Mississippi	221C3, 229A	221C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 17, 1995, and reply comments on or before May 2, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Shaun A. Maher
Smithwick & Belendiuk, P.C.
1990 M Street, N.W. Suite 510
Washington, D.C. 20036
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a

¹ Review of Commission's records indicate that Station WAZF(FM)'s construction permit was forfeited and its call sign was cancelled on April 4, 1991. Dri-Two, Inc., permittee of Station WAZF(FM) filed a petition for reconsideration on June 12, 1991. The Commission denied Dri-Two's petition on July 2, 1993, thus affirming the cancellation of WAZF(FM)'s construction permit.

² In order to increase power, petitioner also proposes to change

its transmitter site for Station WHJT(FM). The proposed coordinates for Channel 228A at Clinton, Mississippi, are North Latitude 32-23-55 and West Longitude 90-20-05. In addition, this proposal is contingent upon Station WVIV(FM) at Pearl, Mississippi, receiving a license to operate on Channel 230C3 pursuant to its one-step application (BMPH-941212IL). Therefore, we may not finalize this proceeding until the Pearl station is license at the site specified in its application.

request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.